STATUTORY INSTRUMENTS

2010 No. 1192

COMPANIES

The Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010

Made - - - -	*7th April 2010*
Coming into force - -	*1st October 2010*

The Treasury make these Regulations in exercise of the powers conferred on them by section 90B of the Financial Services and Markets Act 2000(**1**).

In accordance with section 429(2) of that Act, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Liability of Issuers) Regulations 2010.

(2) These Regulations come into force on 1st October 2010.

Amendments to the Financial Services and Markets Act 2000

2.—(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) For section 90A (compensation for statements in certain publications) substitute—

"**Liability of issuers in connection with published information**

90A. Schedule 10A makes provision about the liability of issuers of securities to pay compensation to persons who have suffered loss as a result of—

(a) a misleading statement or dishonest omission in certain published information relating to the securities, or

(b) a dishonest delay in publishing such information.".

(3) After Schedule 10 insert the Schedule 10A contained in the Schedule to these Regulations.

(**1**) 2000 c.8; sections 90A and 90B were inserted by section 1270 of the Companies Act 2006 (c. 46).

Transitional provision

3.—(1) The amendments made to the Financial Services and Markets Act 2000 by these Regulations have effect in relation to information first published on or after 1st October 2010.

(2) Section 90A of that Act, in the form inserted by the Companies Act 2006, continues to apply to information first published before that date.

Dave Watts
Tony Cunningham
Two of the Lords Commissioners of Her Majesty's Treasury

7th April 2010

SCHEDULE Regulation 2(3)

"SCHEDULE 10A Section 90A

LIABILITY OF ISSUERS IN CONNECTION WITH PUBLISHED INFORMATION

PART 1

SCOPE OF THIS SCHEDULE

Securities to which this Schedule applies

1.—(1) This Schedule applies to securities that are, with the consent of the issuer, admitted to trading on a securities market, where—

(a) the market is situated or operating in the United Kingdom, or

(b) the United Kingdom is the issuer's home State.

(2) For the purposes of this Schedule—

(a) an issuer of securities is not taken to have consented to the securities being admitted to trading on a securities market by reason only of having consented to their admission to trading on another market as a result of which they are admitted to trading on the first-mentioned market;

(b) an issuer who has accepted responsibility (to any extent) for any document prepared for the purposes of the admission of the securities to trading on a securities market (such as a prospectus or listing particulars) is taken to have consented to their admission to trading on that market.

(3) For the purposes of this Schedule the United Kingdom is the home State of an issuer—

(a) in the case of securities in relation to which the transparency obligations directive(**2**) applies, if the United Kingdom is the home Member State for the purposes of that directive (see Article 2.1 of the directive);

(b) in any other case, if the issuer has its registered office (or, if it does not have a registered office, its head office) in the United Kingdom.

Published information to which this Schedule applies

2.—(1) This Schedule applies to information published by the issuer of securities to which this Schedule applies—

(a) by recognised means, or

(b) by other means where the availability of the information has been announced by the issuer by recognised means.

(2) It is immaterial whether the information is required to be published (by recognised means or otherwise).

(3) The following are "recognised means"—

(a) a recognised information service;

(b) other means required or authorised to be used to communicate information to the market in question, or to the public, when a recognised information service is unavailable.

(**2**) As defined in section 103(1) of the Financial Services and Markets Act 2000, as amended by the Companies Act 2006 (c. 46), section 1265.

(4) A "recognised information service" means—

(a) in relation to a securities market situated or operating in the EEA, a service used for the dissemination of information in accordance with Article 21 of the transparency obligations directive;

(b) in relation to a securities market situated or operating outside the EEA, a service used for the dissemination of information corresponding to that required to be disclosed under that directive; or

(c) in relation to any securities market, any other service used by issuers of securities for the dissemination of information required to be disclosed by the rules of the market.

PART 2

LIABILITY IN CONNECTION WITH PUBLISHED INFORMATION

Liability of issuer for misleading statement or dishonest omission

3.—(1) An issuer of securities to which this Schedule applies is liable to pay compensation to a person who—

(a) acquires, continues to hold or disposes of the securities in reliance on published information to which this Schedule applies, and

(b) suffers loss in respect of the securities as a result of—

(i) any untrue or misleading statement in that published information, or

(ii) the omission from that published information of any matter required to be included in it.

(2) The issuer is liable in respect of an untrue or misleading statement only if a person discharging managerial responsibilities within the issuer knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading.

(3) The issuer is liable in respect of the omission of any matter required to be included in published information only if a person discharging managerial responsibilities within the issuer knew the omission to be a dishonest concealment of a material fact.

(4) A loss is not regarded as suffered as a result of the statement or omission unless the person suffering it acquired, continued to hold or disposed of the relevant securities—

(a) in reliance on the information in question, and

(b) at a time when, and in circumstances in which, it was reasonable for him to rely on it.

4. An issuer of securities to which this Schedule applies is not liable under paragraph 3 to pay compensation to a person for loss suffered as a result of an untrue or misleading statement in, or omission from, published information to which this Schedule applies if—

(a) the published information is contained in listing particulars or a prospectus (or supplementary listing particulars or a supplementary prospectus), and

(b) the issuer is liable under section 90 (compensation for statements in listing particulars or prospectus) to pay compensation to the person in respect of the statement or omission.

Liability of issuer for dishonest delay in publishing information

5.—(1) An issuer of securities to which this Schedule applies is liable to pay compensation to a person who—

(a) acquires, continues to hold or disposes of the securities, and

(b) suffers loss in respect of the securities as a result of delay by the issuer in publishing information to which this Schedule applies.

(2) The issuer is liable only if a person discharging managerial responsibilities within the issuer acted dishonestly in delaying the publication of the information.

Meaning of dishonesty

6. For the purposes of paragraphs 3(3) and 5(2) a person's conduct is regarded as dishonest if (and only if)—

(a) it is regarded as dishonest by persons who regularly trade on the securities market in question, and

(b) the person was aware (or must be taken to have been aware) that it was so regarded.

Exclusion of certain other liabilities

7.—(1) The issuer is not subject—

(a) to any liability other than that provided for by paragraph 3 in respect of loss suffered as a result of reliance by any person on—

(i) an untrue or misleading statement in published information to which this Schedule applies, or

(ii) the omission from any such published information of any matter required to be included in it;

(b) to any liability other than that provided for by paragraph 5 in respect of loss suffered as a result of delay in the publication of information to which this Schedule applies.

(2) A person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.

(3) This paragraph does not affect—

(a) civil liability—

(i) under section 90 (compensation for statements in listing particulars or prospectus),

(ii) under rules made by virtue of section 954 of the Companies Act 2006 (compensation),

(iii) for breach of contract,

(iv) under the Misrepresentation Act 1967, or

(v) arising from a person's having assumed responsibility, to a particular person for a particular purpose, for the accuracy or completeness of the information concerned;

(b) liability to a civil penalty; or

(c) criminal liability.

(4) This paragraph does not affect the powers conferred by sections 382 and 384 (powers of the court to make a restitution order and of the Authority to require restitution).

(5) References in this paragraph to liability, in relation to a person, include a reference to another person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

PART 3

SUPPLEMENTARY PROVISIONS

Interpretation

8.—(1) In this Schedule—

(a) "securities" means transferable securities within the meaning of Article 4.1.18 of the markets in financial instruments directive(**3**), other than money-market instruments as defined in Article 4.1.19 of that directive that have a maturity of less than 12 months (and includes instruments outside the EEA);

(b) "securities market" means—

(i) a regulated market as defined in Article 4.1.14 of the markets in financial instruments directive,

(ii) a multilateral trading facility as defined in Article 4.1.15 of the markets in financial instruments directive, or

(iii) a market or facility of a corresponding description outside the EEA.

(2) References in this Schedule to the issuer of securities are—

(a) in relation to a depositary receipt, derivative instrument or other financial instrument representing securities where the issuer of the securities represented has consented to the admission of the instrument to trading as mentioned in paragraph 1(1), to the issuer of the securities represented;

(b) in any other case, to the person who issued the securities.

(3) References in this Schedule to the acquisition or disposal of securities include—

(a) acquisition or disposal of any interest in securities, or

(b) contracting to acquire or dispose of securities or of any interest in securities,

except where what is acquired or disposed of (or contracted to be acquired or disposed of) is a depositary receipt, derivative instrument or other financial instrument representing securities.

(4) References to continuing to hold securities have a corresponding meaning.

(5) For the purposes of this Schedule the following are persons "discharging managerial responsibilities" within an issuer—

(a) any director of the issuer (or person occupying the position of director, by whatever name called);

(b) in the case of an issuer whose affairs are managed by its members, any member of the issuer;

(c) in the case of an issuer that has no persons within paragraph (a) or (b), any senior executive of the issuer having responsibilities in relation to the information in question or its publication.

(6) The following definitions (which apply generally for the purposes of Part 6 of this Act) do not apply for the purposes of this Schedule:

(a) section 102A(1), (2) and (6) (meaning of "securities" and "issuer")(**4**);

(**3**) As defined in section 425(1)(a) of, and paragraph 46 of Schedule 3 to the Financial Services and Markets Act 2000, as amended by regulations 2 and 13 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments)(Modification of Powers) Regulations 2006 (S.I.2006/2975).

(**4**) Sections 102A to 102C and 103 were substituted for section 103 as originally enacted by regulation 2(1) of and paragraph 1 of Schedule 11 to the Prospectus Regulations 2005 (S.I. 2005/1433).

(b) section 102C (meaning of "home State" in relation to transferable securities)."

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the regime for the liability of issuers to third parties in respect of loss suffered as a result of misleading statements or dishonest omissions in information published by the issuer, or dishonest delays in publishing such information.

Regulation 2 substitutes a new section 90A into the Financial Services and Markets Act 2000, and inserts Schedule 10A into the Act. The new Schedule is set out in the Schedule to the Regulations.

Paragraph 1 defines the securities which are to be subject to the new liability regime.

Paragraph 2 defines the information to which the new regime is to apply. This will include all information published by an issuer via a recognised information service, or where the availability of the information has been announced by use of such a service.

Paragraphs 3 and 4 set out the circumstances in which an issuer will be liable to pay compensation for loss suffered as a result of untrue or misleading statements, or dishonest omissions by a person who has acquired, continued to hold or disposed of securities in reliance on published information.

Paragraph 5 sets out the circumstances in which an issuer is liable to pay compensation for loss suffered by a person in respect of securities as a result of dishonest delay by the issuer in publishing information to which the Schedule applies.

Paragraph 6 defines "dishonesty" for the purposes of the Schedule.

Paragraph 7 limits the other forms of liability to which a issuer may be subject in respect of loss suffered as a result of misstatements, omissions and delay.

Paragraph 8 sets out the definitions for the Schedule.

An Impact Assessment of the effect of this instrument on the costs of business has been prepared and is available on HM Treasury's website (www.hm-treasury.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).